

HR Weekly Podcast February 4, 2015

Today is February 4, 2015, and welcome to the HR Weekly Podcast from the State Human Resources Division. This week's podcast deals with a case decided by the United States Fourth Circuit Court of Appeals illustrating the significant amount of time and money that defense of a lawsuit can involve.

In May 2006, Melanie Pitrolo filed a lawsuit against the Buncombe County, Western North Carolina Regional Air Quality Agency and its board of directors. Pitrolo claimed that she was denied promotion to interim director and director of the agency because of her gender. She also accused the agency of retaliation. The agency requested summary judgment at the end of the discovery phase, prior to the start of the trial. Mediation was attempted by the parties while the motion was pending, but it was unsuccessful.

While considering summary judgment, the trial court reviewed Pitrolo's affidavit. In the affidavit, which was the only evidence presented by Pitrolo, she stated that Bob Camby, the retiring director of the agency, told her that he opposed her promotion to director because she is a young woman, among other reasons. During Camby's deposition, however, he denied making this comment. He testified, instead, that he told Pitrolo that the opposition to her was based on her youth and lack of experience. He did not identify the person or persons who were opposed to her promotion.

The trial judge found that the statement by Camby was "hearsay on hearsay." Because this constituted inadmissible hearsay, the trial judge granted summary judgment to the agency. The trial judge found that there was no additional evidence to support gender as a motivating factor in the decision not to promote Pitrolo. Pitrolo then appealed the dismissal of the case.

The court of appeals subsequently determined that Camby's statement was admissible and did constitute direct evidence of gender discrimination. The court remanded the discrimination claim for trial and upheld the grant of summary judgment on the retaliation claim.

After the case was remanded, the agency again filed a motion for summary judgment on several claims made by Pitrolo. In January 2009, three years after the lawsuit was initially filed, the trial court denied Pitrolo's claims under Title VII of the Civil Rights Act of 1964, but declined to dismiss the claim of discrimination. The case went to trial on July 20, 2009.

The court dismissed Pitrolo's claim pertaining to her failure to be promoted to agency director. The jury's findings related to her failure to be promoted to interim director were, however, as follows:

- 1) She was denied the promotion due to her gender,
- 2) Gender was a motivating factor in the agency's decision not to promote her, and
- 3) The agency would have denied her the promotion even if it hadn't taken her gender into consideration.

The jury declined to award Pitrolo any damages.

Both parties filed post-trial motions which bounced back and forth between the trial court and the Fourth Circuit Court of Appeals from July 2009 to late October 2014, over eight years from the date that the lawsuit was initially filed. The case concluded with the Fourth Circuit dismissing all of Pitrolo's motions and affirming the trial court's denial of her motion for receipt of fees and damages.

The main point in this case is not the outcome; but, it is the amount of time and money that was required to bring the case to conclusion. The agency endured a trial and three trips to the court of appeals. In addition to the legal fees and other expenses associated with this process, the agency also incurred significant additional costs associated with defense of the case: time spent by employees gathering information and documents, giving depositions, and providing testimony at trials.

From the time that a lawsuit is filed, it is critical to consider the totality of the time and cost that will be necessary to defend the case, in addition to the risk of any monetary damages that may be awarded. Therefore, each determination must be made on a case by case basis

The information in this podcast was taken from an article in the December 2014 issue of the [South Carolina Employment Law Letter](#). Thank you.